International Union of Operating Engineers, Local 12, AFL–CIO (Kiewit Industrial) ***and*** **Alan Wayne.** Case 28–CB–5193

May 15, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

On November 7, 2000, Administrative Law Judge Thomas Michael Patton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

At issue is whether International Union of Operating Engineers, Local 12, AFL–CIO (the Respondent) violated Section 8(b)(1)(A) and (2) of the Act. The judge found that the Respondent Union violated the Act, as alleged, by causing Kiewit Industrial to discriminate against employee Alan Wayne because of Wayne's internal union activities. As we will explain, there is no direct evidence that the Respondent sought to have Kiewit lay off Wayne. Rather, the judge inferred that the Respondent's August 9, 1999 statements to Kiewit were intended to achieve that result. We conclude, in contrast, that no such inference is warranted, and accordingly we dismiss the complaint.

Facts

Kiewit provided construction services for the El Dorado Energy Plant in Boulder City, Nevada. Alan Wayne was employed by Kiewit from July 20 to December 2, 1999,[2] and worked initially as a Bobcat operator and then as a replacement foreman, a loader operator, and finally as a crane operator.[3] Wayne has been a member of the Respondent since 1992 and an elected member of the International's District 6 advisory board since August 1997.

On August 9, David Garbarino, the Respondent's business representative for Kiewit employees at the El Dorado Project, visited the jobsite. He met with Terry Inman, a Kiewit supervisor and the Project's construction manager, and had a discussion that was the subject of the instant charge.

Garbarino asked how the job was going, and Inman replied that it was going fine. Garbarino then asked if more operators were going to be hired and was told probably not. Garbarino next inquired of Inman how the "New York boy" (Wayne) was doing. Inman asked Garbarino what piece of equipment he operated, and Garbarino told him that Wayne operated the Bobcat. Garbarino then added that Wayne "was on the A board"[4] and that he was "at odds with the Union." Garbarino then asked if Wayne would be laid off when the Bobcat work was done. Inman replied that he would be laid off if no other work were available for him. Later that day, Inman asked two of his supervisors about Wayne and was told that he was a "real good operator."

The Judge's Conclusions

On these facts, the judge concluded that the General Counsel sustained his burden of showing, by a preponderance of the evidence, that the Respondent attempted to cause Kiewit to lay off Wayne. He did this by inferring that Garbarino's statements were unlawfully motivated and had the foreseeable consequence of: (1) raising doubts on the part of Kiewit about Wayne's job performance; (2) suggesting to Kiewit that Wayne was a troublesome person ("at odds with the Union"); and (3) planting the idea that Kiewit should lay off Wayne when the Bobcat work was completed (by inquiring if he would be laid off when that work was finished).

The judge further concluded that the Respondent had not sufficiently rebutted the prima facie case. The Respondent had argued that: (1) Wayne was referred promptly to another job after he was laid off from the El Dorado Project in December; (2) when Wayne had a pay discrepancy issue, the Respondent promptly addressed it; and (3) the types of questions Garbarino asked Inman concerning Wayne were typical of the type of questions he regularly asks during routine job checks. The judge rejected each argument.

As to Wayne's subsequent job referral, the judge found that (1) a nonreferral of Wayne would have been an "obvious" act of discrimination and would therefore have revealed discrimination; thus the Respondent referred him out; and (2) the referrals were made after the filing of the instant charge. Next, the judge found that the Re-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] All dates are 1999, unless indicated otherwise.

[3] Wayne worked at the El Dorado Project until December.

[4] Inman testified that the "A Board" was a reference to the union advisory board.

spondent first addressed Wayne's pay issue after the filing of the instant charge, that such action was not inconsistent with an attempt to cause his layoff, and that there was no evidence that the pay issue was anything more than a clerical error. Finally, the judge found unpersuasive the Respondent's argument that Garbarino's questions to Inman were routine. He found that, based on Garbarino's own testimony, it was not typical to inquire about a specific employee's job performance, comment on internal union problems, or ask if a specific person would be laid off.

The Respondent excepts arguing, among other things, that the General Counsel fell short of his burden of proof since it could not be inferred from Garbarino's comments to Inman that the Respondent sought to cause Kiewit to lay off Wayne.

Discussion

A labor organization violates Section 8(b)(2) of the Act by causing or attempting to cause an employer to discriminate against an employee because the employee has engaged in activities protected by Section 7 of the Act. A union violates Section 8(b)(1)(A) by restraining or coercing an employee in the exercise of Section 7 rights.[5] An 8(b)(2) violation can be established by direct evidence that the union sought to have the employer discriminate,[6] or by sufficient circumstantial evidence to support a reasonable inference that the union requested that the employer discriminate. *M. W. Kellogg Constructors*, 273 NLRB 1049, 1051 (1984), remanded on other grounds 806 F.2d 1435 (9th Cir. 1986). While evidence may be circumstantial, the Board has held that "[t]o establish an 'attempt to cause' violation, there must be some evidence of *union* conduct; it is not sufficient that an employer's conduct might please the union." *Toledo World Terminals*, 289 NLRB 670, 673 (1988) (emphasis added). See also *Wenner Ford Tractor Rentals*, 315 NLRB 964, 965 (1994).

While the judge correctly stated that the Board may infer, from the overall circumstances of a case, that an illegal union request to discriminate has been made, the Board may only do so when it finds such an inference reasonable. Based on the record before us, and applicable case law, we agree with the Respondent that it is not reasonable to infer that Garbarino's comments rise to the level of an implied union request that Kiewit discriminate against Wayne by seeking to cause his layoff.

We do not find that Garbarino's comments, whether standing alone or in the context of the conversation with Inman, display animus toward Wayne. Nor could we find that Garbarino's comments logically convey to Kiewit that the Respondent wished the Employer to discriminate against Wayne. While Garbarino gave no explanation as to why he referred to Wayne as the "New York boy," it is not reasonable to infer from this phrase that Garbarino was attempting to raise doubts about Wayne's job performance. Nor do we find it reasonable to infer that Garbarino's comment that Wayne was "at odds with the union"—without more—would suggest to Inman that Wayne was a troublesome employee. Although the statement reflects that there were differences between Wayne and the Respondent, the statement does not establish that the Respondent bore animus against Wayne because of those differences. Finally, even if the statement establishes such animus, the record does not establish that the Respondent was asking Inman to lay off Wayne because of that animus. In this regard, we find nothing in Garbarino's question whether Wayne would be laid off when the Bobcat work was completed to reasonably suggest that the Union was attempting to cause Kiewit to lay off Wayne at a time when it would otherwise not do so. As in *Iron Workers Local 433 (Riverside Steel Construction)*, 169 NLRB 667, 668 (1968), we are faced with a situation where the Respondent did not request Wayne's layoff, Kiewit did not lay him off until December, months after the conversation, and "there is insufficient evidence in the record to support inferences of the foregoing or of an understanding explicit enough to obviate the need for these missing elements."[7]

[5] Sec. 8(b)(1)(A) and (2) provide, in relevant part, that:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7 . . .;
>
> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) . . ."

Sec. 7 provides that:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

[6] For example, in *Teamsters Local 182 (S. A. Scullen Co.)*, 164 NLRB 234 (1967), a union was found to violate Sec. 8(b)(1)(A) and (2) based on its direct request that the company discharge its employee based on an internal union dispute.

[7] Cases in which violations have been found are readily distinguishable. In *Avon Roofing & Sheet Metal*, 312 NLRB 499 (1993), the Board agreed with the judge that the circumstantial evidence was sufficient to demonstrate that an employer's failure to recall an employee was attributable to a request from the union. Specifically, the judge relied on, inter alia, evidence that a union steward spoke with one of the employer's superintendents and pressured him not to recall the discriminatees. In *Warehouse Employees Local 20408 (Dubovsky & Sons)*, 296 NLRB 396 (1989), a violation was found based on: a state-

Thus, there is no 8(b)(2) violation. In addition, there was no 8(b)(1)(A) violation. Garbarino told Wayne that he was not trying to get Wayne fired. Thus, Garbarino did not coerce or restrain Wayne with a message that Garbarino was trying to accomplish that end.

ORDER

The complaint is dismissed.

Brian Kalmaer, Esq., for the General Counsel.
David Koppelman, Atty., of Las Vegas, Nevada, for the Respondent.

DECISION

STATEMENT OF THE CASE

THOMAS MICHAEL PATTON, Administrative Law Judge. This case was heard in Las Vegas, Nevada, on June 27, 2000. Alan Wayne, an individual, filed the charge. The charge was filed on August 26, 1999, alleging violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act by International Union Of Operating Engineers, Local 12, AFL–CIO (Union or Respondent). The charge alleges that the Union attempted to force an employer to lay off Alan Wayne (Wayne) for internal union considerations. On November 30, 1999, a complaint issued alleging that the Union violated of Section 8(b)(1)(A) and (2) of the Act. The Union denies any violation of the Act.

The following findings are based on the entire record, including the posthearing briefs filed by the General Counsel and the Union. In assessing credibility testimony contrary to my findings has not been credited, based on a review of the entire record and consideration of the probabilities and the demeanor of the witnesses. See *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962).

FINDINGS OF FACT

I. JURISDICTION

The Union admits facts showing that Kiewit Industrial (Employer or Kiewit) is a corporation that meets the Board's jurisdictional standards and that Kiewit is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union admits that it is a labor organization within the meaning of Section 2(5) of the Act.

ment by the vice president of the incumbent union to employees that they would be the first to be fired for engaging in activity on behalf of an opposing union; the fact that those employees were subsequently discharged; and evidence that the employer's president harbored animosity toward the opposing union. Thus, in both cases, the unions engaged in specific, albeit, indirect conduct designed to cause the employers to unlawfully discriminate against employees. Here, conversely, we find that the comments made by Garbarino simply do not rise to that level.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background

At all material times Kiewit has been engaged in providing construction services for the El Dorado Energy Plant in Boulder City, Nevada (the Project). There was a peak complement of about 450 employees. In August 1999, there were 10 to 15 operating engineers.[1] Alan Wayne was an employee of Kiewit from July 20 until December 2, and a member of the Union.

As an employee of Kiewit, Wayne worked under a collective-bargaining agreement between Kiewit and the Union. The Project was constructed under a project labor agreement that incorporated various provisions of the National Construction Stabilization Agreement and the Southern Nevada Master Labor Agreement between the International Union of Operating Engineers and the Nevada Contractors Association. Other than a contract requirement that the steward would remain on the job so long as there was work in a classification the steward was qualified to perform, the labor agreement did not restrict the order of layoff of Kiewit employees. The Union had no stewards at the Project.

Wayne was initially dispatched to the Project as a Bobcat[2] operator, he later worked as a replacement foreman for a month, then as a loader operator and as a crane operator. There is no issue regarding Wayne's ability or work performance. Wayne has been a member of Local 12 since 1992 and has been an elected member of the International Union of Operating Engineers, District 6 advisory board since August 1997. His term was to end in August 2000 and he ran for reelection.

David Garbarino was the Union's business representative for Kiewit employees at the Project and an admitted agent of the Union. He was appointed to that position on February 21, 1997. His duties included job checks, handling grievances and enforcing the collective-bargaining agreement between Kiewit and the Union.

Terry Inman was a Kiewit supervisor and the construction manager at the Project. Inman had the authority to lay off Kiewit operating engineers represented by the Union, including Wayne.

2. The August 9, 1999 conversation

On August 9 Garbarino had a conversation with Inman at the Project regarding layoffs. The statements by Garbarino during this conversation are the acts alleged to have violated the Act. Garbarino and Inman testified to different versions of the conversation.

Inman related that Garbarino came to the jobsite and spoke with him in his office. Inman stated that when union agents come on site, they usually check in through the gate and go to the office and talk briefly before going out on site. Inman testified that no one else was present during the conversation. Garbarino asked how the job was going and Inman said it was going fine. Garbarino asked if more operators would be hired.

[1] All dates hereafter are 1999, unless otherwise indicated.

[2] The transcript is corrected to capitalize the word "Bobcat," a trademark.

Inman told him that more operators would probably not be hired. Garbarino asked how the "New York boy" was doing. Inman asked what piece of equipment he ran, to which Garbarino replied that he ran the Bobcat. Inman did not know Wayne by name, but knew him as the Employer's only Bobcat operator. Garbarino then commented that Wayne "was on the A board" and that he was "at odds with the Union." Inman later in his testimony clarified the reference as being to the advisory board. Garbarino then asked if Wayne would be laid off when the Bobcat work was done. Inman replied that if no other work was available for him, Wayne would be laid off. Later that day Inman spoke to Lower-Level Supervisors Bill Galligan and Tim Hartman. He asked them what kind of a hand Wayne was, and they both said he was a "real good operator."

Inman had spoken with Garbarino on numerous occasions in the past and had discussed layoffs with him in the past. Inman volunteered that most of the business agents come out on Thursday or Friday.

Garbarino testified to a somewhat different version of the conversation. Garbarino related that he went to the Project on August 9 to investigate the termination of an employee. While at the site Garbarino spoke with Inman in his office. Initially, Foreman Donny Dennison was present, but there is no evidence he was present during the relevant part of the conversation. Garbarino initiated a conversation about potential layoffs.

Garbarino related that as part of his standard job check, or whenever he talked to Inman, he asked about the status of the job and how much work was left. Garbarino testified that on August 9 he was of the opinion that the job was approaching its end. Garbarino stated that he viewed discussing potential layoffs with an employer as being part of his job. The collective-bargaining agreement provides that the business representative of the Union has access to the job to perform his duties. Garbarino views discussing layoffs as falling under that provision.

Garbarino denied asking Inman to layoff Wayne or attempting to sway Inman from laying off operating engineers. Garbarino testified that he did not recall mentioning Wayne by name during the conversation or mentioning Wayne's participation on the advisory board. Garbarino acknowledged that he was aware of upcoming elections for the advisory board at the end of August.

Garbarino conceded that he made reference to the Bobcat. Garbarino explained that because the Union had experienced problems with laborers operating the Bobcat, he engaged Inman in discussion of the remaining Bobcat work. According to Garbarino, Inman said there was not a lot of Bobcat work left, mostly doing the rocks and clean up type work.

In resolving the different versions of the August 9 conversation, I conclude that to the extent they vary, the testimony of Inman was more probable and more credibly offered. His version of the conversation is consistent with his inquiry into Wayne's job performance after the conversation with Garbarino. Moreover, the record does not disclose any evidence of bias by Inman.

3. The relationship between Wayne and Garbarino

Wayne's credible and uncontroverted testimony is that he had a conversation with Garbarino on the morning of August 9, at the Project. No one else was present. Garbarino checked his card. At that time Wayne told him that there was no steward on the job and that one was needed. Garbarino replied that they were working on it.

Wayne testified that on August 31 he had a telephone conversation with Garbarino. Wayne called Garbarino at his home. Wayne asked what, if any, problem he had with him personally, and Garbarino replied he had none. Wayne then asked Garbarino, "[W]hy would you be out on the job trying to have me run off? Where does it say that that's your job?" Garbarino replied, "I didn't do that." Garbarino did not testify regarding the conversation, and Wayne's testimony is credited.

Wayne credibly testified that he spoke with Garbarino the next morning at the Project. No one else was present. Wayne testified that Garbarino approached him and said, "[H]e hadn't done what I said he did, about trying to get me run off, and I asked him why would he be in Terry Inman's office talking about layoffs bringing my name up, and he said, well, he wanted to know where his guys were going to be. And I told him that if he wanted to know where they were going to be, he could find them on the out-of-work list when they got laid off." Garbarino did not testify regarding this conversation.

Wayne testified that as a member of the District 6 advisory board he participates in consideration of transfers, pretrials, submission lists for new members, votes on extensions for members trying to extend payment on their dues, and similar tasks The pretrials involve members brought up on charges. Business representatives have been brought up on charges in front of the advisory board, but Garbarino has not been brought up on charges. This testimony is uncontroverted and is credited.

Wayne testified on cross-examination that Garbarino spoke with Wayne September 17 regarding a pay rate issue related to Wayne being moved you from the Bobcat to a loader, apparently a job with higher pay rate. The Employer had not changed Wayne's pay rate and the pay issue was corrected sometime after the September 17 conversation.

B. Analysis

In the posthearing briefs the General Counsel contends, and the Union acknowledges, that a labor organization violates Section 8(b)(1)(A) and (2) of the Act by causing or attempting to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act. There is no dispute that to establish such a violation, direct evidence that a union requested an employer to discriminate is not necessary. Rather, a union can be found to have caused employer discrimination if there is sufficient evidence to support a reasonable inference of a union request. *Kellog Constructors*, 273 NLRB 1049, 1051 (1984), remanded on other grounds 806 F.2d 1435 (9th Cir. 1986). Accord, *Avon Roofing*, 312 NLRB 499 (1993).

The Union correctly argues that while there need not be direct evidence of a union request, there must be evidence of union conduct and not merely an inference that certain actions by the employer would please the union. *Toledo World Terminals*, 289 NLRB 670, 673 (1988). Where there is no direct evidence of a union request or suggestion that an employer lay off an employee, the complaint must be dismissed, unless the General Counsel can meet its burden of establishing, by a prepon-

derance of the evidence, that it is reasonable to infer such a request was made. *Wenner Ford Tractor Rentals*, 315 NLRB 964 (1994).

As contended by the General Counsel, Respondent's intent or motive may be inferred from the circumstances. Some conduct, especially that for which no legitimate purpose is shown, may by its very nature contain implications of the intent. An unlawful act, in the absence of direct evidence, is generally established through inference from the record as a whole. *Continental Can Co.*, 291 NLRB 290, 291 fn. 5 (1988) *(*citing *Heath International,* 196 NLRB 318 (1972)). If a union's action, directed to an employer, was intended to discriminate against a member, such action constitutes an unfair labor practice.

To determine whether a union has violated Section 8(b)(2), the "true purpose" or "real motive" behind the union's actions should be ascertained." *NLRB v. Electrical Workers Local 952*, 758 F.2d 436, 440 (9th Cir. 1985) (citations omitted). A union's intent or motive may be inferred from the circumstances. See *NLRB v. Machinists District Lodge 727*, 279 F.2d 761, 766 (9th Cir. 1060), cert. denied 364 U.S. 890 (1960).

The General Counsel has established, by a preponderance of the evidence, a prima facie case that the Union attempted to cause the Employer to lay off Wayne. The evidence further establishes that the Union's intent or motive was intraunion issues or other unprivileged union considerations. These conclusions are based on several facts viewed in combination.

When Garbarino visited the jobsite on August 9 to investigate the termination of an employee he went to Inman's office, which was consistent with the usual practice of union agents who were visiting the jobsite to check in at the office. Accordingly, no special significance is attached to Garbarino going to the office and exchanging pleasantries with Inman. Likewise, Garbarino's inquiry regarding the possible need for additional operators was explained by Garbarino and was not improper.

In contrast, the record does not explain any legitimate reason why Garbarino would ask how the "New York boy" was doing. There is no suggestion that Wayne was not a qualified and competent worker and there is no evidence that Garbarino had any doubts regarding Wayne's qualifications and competence. The Union does not contend, and the evidence does not suggest, that the inquiry was related to a contractual duty by the Union to refer qualified and competent workers. A foreseeable consequence of asking the question was to raise a question in Inman's mind about Wayne's job performance.

Similarly, the record does not explain any legitimate reason why Garbarino would remark that Wayne was on the advisory board and that he was "at odds with the Union." When coupled with Garbarino's inquiry regarding how the "New York boy" was doing, the remark would have the foreseeable consequence of creating further concern about Wayne's job performance by suggesting that the Union viewed him, in some unspecified way, as being a troublesome person.

Only after raising a question regarding Wayne's job performance did Garbarino inquire if Wayne would be laid off when the Bobcat work was done. In the context of the remarks casting doubt on Wayne's qualifications and competence, and the suggestion that he was "at odds with the Union," the clear implication is that Wayne should be considered for layoff when the Bobcat work was completed. Moreover, Garbarino's remarks implied that Kiewit need not be concerned with repercussions from the Union if Wayne was laid off.

Garbarino's remarks had their foreseeable effect of creating a concern by Inman that Wayne might be a less desirable employee who should be considered for layoff when the Bobcat work was completed. It is clear that Inman's inquiry later that day into Wayne's job performance was a consequence of Garbarino's remarks.

Garbarino's explanation that he inquired whether Wayne would be laid off because the Union had prior problems with laborers operating the Bobcat is not logical and is not credited. The question Garbarino asked was not whether the Employer was going to suspend Bobcat work, thus raising the possibility that the Employer might thereafter assign the work to laborers. The question was directed only to what would happen to Wayne after the Bobcat work was completed. In any case, this professed concern does not serve to explain the other remarks Garbarino made.

A preponderance of the evidence, viewed as a whole, is sufficient to support a reasonable inference, which I draw, that the Union attempted to cause the Employer to lay off Wayne. Although not necessary to this conclusion, Garbarino's reference to Wayne, a longtime member of Local 12, as the "New York boy" is evidence of hostility toward Wayne.

The evidence presented by the Union is insufficient to rebut the prima facie case. The Union points to the fact that Wayne was referred to the Project and that he was promptly referred to another job when he was laid off in December. This argument is unconvincing. It would be obvious if the Union did not refer Wayne out in a nondiscriminatory manner and would not likely go unnoticed by Wayne. Proper operation of the hiring hall is not inconsistent with an attempt to cause Wayne's layoff by subterfuge. Moreover, the record does not establish that Wayne's unspecified intraunion problems predated his referral to the Project. Little weight is attached to his referral to a new job after his layoff, since it followed the filing of the charge.

The Union next points to the adjustment of Wayne's incorrect pay rate when his wages were not increased after he moved from the Bobcat to a loader. As with his referral from the hiring hall, this occurred after the filing of the charge and is not inconsistent with an attempt to cause Wayne's layoff by subterfuge. Moreover, there is no evidence that the pay issue was any more than a clerical error, as opposed to a substantive labor-management dispute.

Finally, the Union argues the types of questions Garbarino asked Inman concerning Wayne are typical of the questions he asks during routine job checks. Garbarino testified that he has asked similar questions concerning how much work was left on jobs and whether employees were expected to be laid off at other jobsites where Wayne was not working. Garbarino stated that such information helps him plan his workday and that on various jobsites employees ask him about the status of jobs and that it is part of his job to provide employees with accurate information concerning the status of the projects on which they are employed. The problem with this contention is that it is not the sort of inquiry that Garbarino made on August 9. Other than

asking if more operators would be needed, there is no evidence that anything of substance was discussed other than Wayne's job performance, his internal union problems, when the work for the one Bobcat on the Project would be completed and whether this one employee out of 10 to 15 operators would be laid off. Rather than establishing that Garbarino was following usual practice, the evidence demonstrates the contrary. The focus of the conversation on August 9 was not on the common interests of employees represented by the Union, but on Wayne.

Based on the foregoing, the evidence establishes that the Union violated Section 8(b)(1)(A) and (2) of the Act.

CONCLUSIONS OF LAW

1. The Employer an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By attempting to cause the Employer to lay off Alan Wayne Respondent violated Section 8(b)(1)(A) and (2) of the Act.

[Recommended Order omitted from publication.]